

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 226

**FILED**  
**JANICE K. BREWER**  
**SECRETARY OF STATE**

## **SENATE BILL 1241**

AN ACT

AMENDING SECTIONS 20-456 AND 20-461, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 2, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-469; RELATING TO THE TRANSACTION OF INSURANCE BUSINESS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-456, Arizona Revised Statutes, is amended to  
3 read:

4 20-456. Cease and desist order for defined or prohibited  
5 practices; civil penalty

6 A. If after a hearing the director finds that the person charged has  
7 engaged or is engaging in any act or practice defined in or prohibited under  
8 this article as an illegal or unfair method of competition or an unfair or  
9 deceptive act or practice, the director shall order the person to cease and  
10 desist from the proscribed acts or practices.

11 B. If the act or practice is a violation of section 20-443, through  
12 20-443.01, 20-444, 20-445, 20-446, 20-447, 20-448, 20-448.01, 20-448.02,  
13 20-449, 20-451, 20-452 or 20-467 or a general business practice of committing  
14 or performing acts or omissions proscribed by section 20-461 AND 20-469, the  
15 director may also impose a civil penalty of not more than one thousand  
16 dollars for each act or violation but not to exceed an aggregate penalty of  
17 ten thousand dollars unless the person intentionally violates any section  
18 enumerated in this subsection, in which case the director may impose a civil  
19 penalty of up to five thousand dollars for each act or violation but not to  
20 exceed an aggregate penalty of fifty thousand dollars in any six month  
21 period.

22 C. No order of the director pursuant to this section or order of A  
23 court to enforce it, or holding of a hearing, may in any manner relieve or  
24 absolve any person affected by the order or hearing from any other liability,  
25 penalty or forfeiture under law.

26 Sec. 2. Section 20-461, Arizona Revised Statutes, is amended to read:

27 20-461. Unfair claim settlement practices

28 A. A person shall not commit or perform with such a frequency to  
29 indicate as a general business practice any of the following:

30 1. Misrepresenting pertinent facts or insurance policy provisions  
31 relating to coverages at issue.

32 2. Failing to acknowledge and act reasonably and promptly upon  
33 communications with respect to claims arising under an insurance policy.

34 3. Failing to adopt and implement reasonable standards for the prompt  
35 investigation of claims arising under an insurance policy.

36 4. Refusing to pay claims without conducting a reasonable  
37 investigation based upon all available information.

38 5. Failing to affirm or deny coverage of claims within a reasonable  
39 time after proof of loss statements have been completed.

40 6. Not attempting in good faith to effectuate prompt, fair and  
41 equitable settlements of claims in which liability has become reasonably  
42 clear.

1           7. AS A PROPERTY OR CASUALTY INSURER, FAILING TO RECOGNIZE A VALID  
2 ASSIGNMENT OF A CLAIM. THE PROPERTY OR CASUALTY INSURER SHALL HAVE THE  
3 RIGHTS CONSISTENT WITH THE PROVISIONS OF ITS INSURANCE POLICY TO RECEIVE  
4 NOTICE OF LOSS OR CLAIM AND TO ALL DEFENSES IT MAY HAVE TO THE LOSS OR CLAIM,  
5 BUT NOT OTHERWISE TO RESTRICT AN ASSIGNMENT OF A LOSS OR CLAIM AFTER A LOSS  
6 HAS OCCURRED.

7           ~~7.~~ 8. Compelling insureds to institute litigation to recover amounts  
8 due under an insurance policy by offering substantially less than the amounts  
9 ultimately recovered in actions brought by the insureds.

10           ~~8.~~ 9. Attempting to settle a claim for less than the amount to which  
11 a reasonable person would have believed he was entitled by reference to  
12 written or printed advertising material accompanying or made part of an  
13 application.

14           ~~9.~~ 10. Attempting to settle claims on the basis of an application  
15 which was altered without notice to, or knowledge or consent of, the insured.

16           ~~10.~~ 11. Making claims payments to insureds or beneficiaries not  
17 accompanied by a statement setting forth the coverage under which the  
18 payments are being made.

19           ~~11.~~ 12. Making known to insureds or claimants a policy of appealing  
20 from arbitration awards in favor of insureds or claimants for the purpose of  
21 compelling them to accept settlements or compromises less than the amount  
22 awarded in arbitration.

23           ~~12.~~ 13. Delaying the investigation or payment of claims by requiring  
24 an insured, a claimant or the physician of either to submit a preliminary  
25 claim report and then requiring the subsequent submission of formal proof of  
26 loss forms, both of which submissions contain substantially the same  
27 information.

28           ~~13.~~ 14. Failing to promptly settle claims if liability has become  
29 reasonably clear under one portion of the insurance policy coverage in order  
30 to influence settlements under other portions of the insurance policy  
31 coverage.

32           ~~14.~~ 15. Failing to promptly provide a reasonable explanation of the  
33 basis in the insurance policy relative to the facts or applicable law for  
34 denial of a claim or for the offer of a compromise settlement.

35           ~~15.~~ 16. Attempting to settle claims for the replacement of any  
36 nonmechanical sheet metal or plastic part which generally constitutes the  
37 exterior of a motor vehicle, including inner and outer panels, with an  
38 aftermarket crash part which is not made by or for the manufacturer of an  
39 insured's motor vehicle unless the part meets the specifications of section  
40 44-1292 and unless the consumer is advised in a written notice attached to  
41 or printed on a repair estimate which:

42           (a) Clearly identifies each part.

43           (b) Contains the following information in ten point or larger type:

44           "This estimate has been prepared based on the use of replacement  
45           parts supplied by a source other than the manufacturer of your



1 motor vehicle. Warranties applicable to these replacement parts  
2 are provided by the manufacturer or distributor of these parts  
3 rather than the manufacturer of your vehicle."

4 ~~16.~~ 17. As an insurer subject to section 20-826, 20-1342, 20-1402 or  
5 20-1404, or as an insurer of the same type as those subject to section  
6 20-826, 20-1342, 20-1402 or 20-1404 that issues policies, contracts, plans,  
7 coverages or evidences of coverage for delivery in this state, failing to pay  
8 charges for reasonable and necessary services provided by any physician  
9 licensed pursuant to title 32, chapter 8, 13 or 17, if the services are  
10 within the lawful scope of practice of the physician and the insurance  
11 coverage includes diagnosis and treatment of the condition or complaint,  
12 regardless of the nomenclature used to describe the condition, complaint or  
13 service.

14 ~~17.~~ 18. Failing to comply with chapter 15 of this title.

15 ~~18.~~ 19. Denying liability for a claim under a motor vehicle liability  
16 policy in effect at the time of an accident without having substantial facts  
17 based on reasonable investigation to justify the denial for damages or  
18 injuries that are a result of the accident and that were caused by the  
19 insured if the denial is based solely on a medical condition that could  
20 affect the insured's driving ability.

21 B. Nothing in subsection A, paragraph ~~16~~ 17 of this section shall be  
22 construed to prohibit the application of deductibles, coinsurance, preferred  
23 provider organization requirements, cost containment measures or quality  
24 assurance measures if they are equally applied to all types of physicians  
25 referred to in this section, and if any limitation or condition placed upon  
26 payment to or upon services, diagnosis or treatment by any physician covered  
27 by this section is equally applied to all physicians referred to in  
28 subsection A, paragraph 16 of this section, without discrimination to the  
29 usual and customary procedures of any type of physician.

30 C. In prescribing rules to implement this section, the director shall  
31 follow, to the extent appropriate, the national association of insurance  
32 commissioners unfair claims settlement practices model regulation.

33 D. Nothing contained in this section is intended to provide any  
34 private right or cause of action to or on behalf of any insured or uninsured  
35 resident or nonresident of this state. It is, however, the specific intent  
36 of this section to provide solely an administrative remedy to the director  
37 for any violation of this section or rule related thereto.

38 E. The director shall deposit, pursuant to sections 35-146 and 35-147,  
39 all civil penalties collected pursuant to this article in the state general  
40 fund.

41 Sec. 3. Title 20, chapter 2, article 6, Arizona Revised Statutes, is  
42 amended by adding section 20-469, to read:

43 20-469. Motor vehicle loss; choice of glass repair facility

44 UNLESS OTHERWISE PRESCRIBED BY CONTRACT, A PERSON IN THIS STATE HAS THE  
45 RIGHT TO CHOOSE ANY GLASS REPAIR FACILITY FOR THE REPAIR OF A LOSS RELATING

1 TO MOTOR VEHICLE GLASS. IF AN INSURER RECOMMENDS OR PROVIDES INFORMATION  
2 ABOUT A GLASS REPAIR FACILITY, THE INSURER SHALL INFORM THE PERSON OF THIS  
3 RIGHT AT THE SAME TIME AS MAKING THE RECOMMENDATION OR PROVIDING THE  
4 INFORMATION. THIS SECTION DOES NOT CREATE A PRIVATE RIGHT OR CAUSE OF ACTION  
5 TO OR ON BEHALF OF ANY PERSON. THIS SECTION PROVIDES SOLELY AN  
6 ADMINISTRATIVE REMEDY TO THE DIRECTOR FOR ANY VIOLATION OF THIS SECTION.

APPROVED BY THE GOVERNOR MAY 12, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2004.